

104TH CONGRESS
2D SESSION

H. R. 3994

To amend the Small Business Act to provide comprehensive and structured business development assistance to emerging small business concerns owned by economically disadvantaged individuals to foster their entrepreneurial potential and marketplace success, without relying on preferential award of Government contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 1996

Mrs. MEYERS of Kansas introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend the Small Business Act to provide comprehensive and structured business development assistance to emerging small business concerns owned by economically disadvantaged individuals to foster their entrepreneurial potential and marketplace success, without relying on preferential award of Government contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Entrepreneur Develop-
5 ment Program Act of 1996”.

1 **SEC. 2. ENTREPRENEUR DEVELOPMENT PROGRAM.**

2 Section 7(j) of the Small Business Act (15 U.S.C.
3 636(j)) is amended to read as follows:

4 “SEC. 7(j) ENTREPRENEUR DEVELOPMENT PRO-
5 GRAM.—

6 “(1) PROGRAM ESTABLISHED.—There is estab-
7 lished within the Administration an Entrepreneur
8 Development Program (hereinafter referred to as the
9 ‘Program’). The Program shall provide comprehen-
10 sive and structured business development assistance
11 to foster the entrepreneurial potential of emerging
12 small business concerns owned and controlled by eli-
13 gible individuals. The Program shall be managed by
14 an Associate Administrator under the supervision of,
15 and responsible to, the Administrator.

16 “(2) ELIGIBILITY.—

17 “(A) IN GENERAL.—The Program estab-
18 lished by paragraph (1) shall be available exclu-
19 sively to emerging small business concerns
20 owned and controlled by eligible individuals,
21 whose status as such has been certified by the
22 Administration.

23 “(B) PROGRAM PARTICIPANT.—The term
24 ‘Program Participant’ means an emerging small
25 business concern, meeting the requirements of
26 subparagraph (C), which

1 “(i) is at least 51 percent uncondi-
2 tionally owned by

3 “(I) one or more eligible individ-
4 uals,

5 “(II) an Indian tribe (or a wholly
6 owned business entity of such tribe),
7 or

8 “(III) a Native Hawaiian organi-
9 zation, or

10 “(ii) in the case of any publicly-owned
11 business, at least 51 percent of the stock
12 of such concern is unconditionally owned
13 by

14 “(I) one or more eligible individ-
15 uals,

16 “(II) an Indian tribe (or a wholly
17 owned business entity of such tribe),
18 or

19 “(III) a Native Hawaiian organi-
20 zation.

21 “(C) CONTROL OF DAILY BUSINESS OPER-
22 ATIONS.—A concern meets the requirements of
23 this subparagraph if the management and daily
24 business operations of such concern are con-
25 trolled by one or more eligible individuals, an

1 Indian tribe, or a Native Hawaiian organiza-
2 tion.

3 “(D) EMERGING SMALL BUSINESS CON-
4 CERN.—For the purposes of this subsection, the
5 term emerging small business concern means a
6 small business concern the size of which is less
7 than or equal to 25 percent of the numerical
8 size standard for the standard industrial classi-
9 fication that encompasses the principal line of
10 business of such concern.

11 “(E) ELIGIBLE INDIVIDUAL.—For partici-
12 pation in the program, an individual must not
13 have a net worth in excess of \$250,000, exclud-
14 ing from such computation the value of the per-
15 son’s investment in the emerging small business
16 concern that will participate in the Program.

17 “(3) OUTREACH FOR PROGRAM PARTICI-
18 PANTS.—The Administration shall develop and im-
19 plement an outreach program to inform and recruit
20 eligible concerns to apply for the Program. Such
21 outreach program shall make a sustained and sub-
22 stantial effort to solicit Program applications from
23 small business concerns located within States having
24 relatively few Program Participants.

1 “(4) DETERMINATIONS OF INDIVIDUAL ELIGI-
2 BILITY.—

3 “(A) DIVISION OF PROGRAM CERTIFI-
4 CATION AND ELIGIBILITY ESTABLISHED.—

5 There is established a Division of Program Cer-
6 tification and Eligibility (hereinafter referred to
7 as the ‘Division’). The Division shall be headed
8 by a Director who shall report to the Associate
9 Administrator responsible for the Program.

10 “(B) RESPONSIBILITIES OF THE DIVI-
11 SION.—The responsibilities of the Division are
12 to—

13 “(i) receive, review, and evaluate ap-
14 plications for certification as a Program
15 Participant pursuant to the eligibility cri-
16 teria in paragraph (2);

17 “(ii) advise each Program applicant
18 within 15 days after the receipt of an ap-
19 plication as to whether such application is
20 complete and suitable for evaluation and, if
21 not, what matters must be rectified;

22 “(iii) render recommendations on such
23 applications to the Associate Administrator
24 for the Program;

1 “(iv) review and evaluate financial
2 statements and other submissions from
3 Program Participants;

4 “(v) make requests for the initiation
5 of termination or graduation proceedings,
6 as appropriate, to the Associate Adminis-
7 trator;

8 “(vi) make recommendations to the
9 Associate Administrator concerning re-
10 quests for reconsideration or challenges
11 from applicants that have been denied pro-
12 gram admission; and

13 “(vii) decide protests regarding the
14 current eligibility a Program Participant
15 for continued Program participation.

16 “(C) DEADLINE FOR ACTION ON PROGRAM
17 APPLICATIONS.—Not later than 90 days after
18 receipt of a completed application for Program
19 certification, the Associate Administrator for
20 the Program shall certify a small business con-
21 cern as a Program Participant or shall deny
22 such application.

23 “(D) ADDITIONAL LIMITATIONS ON PRO-
24 GRAM ELIGIBILITY.—

1 “(i) Except for an Indian tribe or a
2 Native Hawaiian organization, no individ-
3 ual upon whom the eligibility of a firm
4 which graduated from the Minority Small
5 Business and Capital Ownership Develop-
6 ment Program before the effective date of
7 this subsection shall be eligible to assert
8 such status with respect to any other busi-
9 ness concern making application for the
10 Program certification after such effective
11 date.

12 “(ii) Except in the case of an Indian
13 tribe or a Native Hawaiian organization,
14 an individual upon whom eligibility is
15 based pursuant to paragraph (2) shall be
16 permitted to assert such Program eligi-
17 bility for only one small business concern.

18 “(iii) No concern shall be subse-
19 quently recertified for Program participa-
20 tion if its prior Program participation was
21 concluded for any of the reasons described
22 in paragraph (9).

23 “(5) DURATION OF PARTICIPATION.—The term
24 of participation in the Program shall be five years

1 from the date of certification as a Program Partici-
2 pant.

3 “(6) BUSINESS PLANNING.—

4 “(A) PLAN REQUIRED.—Each concern
5 making application to the Program and each
6 Program Participant shall submit to the Ad-
7 ministration a business plan (referred to as the
8 ‘business plan’), addressing the matters de-
9 scribed in subparagraph (B).

10 “(B) CONTENTS OF THE BUSINESS
11 PLAN.—For the purposes of subparagraph (A),
12 a business plan shall include the following:

13 “(i) An analysis of market potential,
14 competitive environment, and other busi-
15 ness analyses estimating the firm’s pros-
16 pects for profitable operations during its
17 Program participation term and after
18 graduation.

19 “(ii) An analysis of the firm’s busi-
20 ness strengths and weaknesses with par-
21 ticular attention to correcting any finan-
22 cial, managerial, technical, or personnel
23 weaknesses which are likely to impede the
24 business development of the firm.

1 “(iii) Specific targets, objectives, and
2 goals for the firms business development
3 during the next year and each succeeding
4 year of its Program participation term and
5 three years after exiting the Program, uti-
6 lizing the results of the analyses conducted
7 pursuant to clauses (i) and (ii).

8 “(iv) Continuous attention regarding
9 the Program Participant’s successful tran-
10 sition to sustainable business operations
11 after exiting the Program.

12 “(C) MAINTAINING A CURRENT BUSINESS
13 PLAN.—Each Program Participant shall annu-
14 ally review its currently approved plan with its
15 Business Opportunity Specialist and modify
16 such plan as may be appropriate. Any modified
17 plan shall be submitted to the Administration
18 for approval. The currently approved plan shall
19 be considered valid until such time as a modi-
20 fied plan is approved.

21 “(7) FORMS OF ASSISTANCE.—

22 “(A) IN GENERAL.—The assistance pro-
23 vided to a Program Participant may include—

24 “(i) developing and maintaining the
25 Program Participant’s business plan;

1 “(ii) providing access to training and
2 assistance in general business management
3 (including, but not limited to, organiza-
4 tional management, financial management,
5 personnel management, marketing, and
6 proposal development);

7 “(iii) facilitating access to debt fi-
8 nancing through guaranteed loans made
9 pursuant to section 7(a) and other means;

10 “(iv) facilitating access to equity fi-
11 nancing through the Small Business In-
12 vestment Company Program and other
13 means; and

14 “(v) facilitating access to adequate
15 surety bonding through the surety bond
16 guarantee programs authorized by part B
17 of title IV of the Small Business Invest-
18 ment Act of 1958.

19 “(B) USE OF PRIVATE SECTOR PART-
20 NERS.—

21 “(i) The Administration may provide
22 financial assistance to public or private or-
23 ganizations to undertake the activities de-
24 scribed in paragraph (A).

1 “(ii) Such financial assistance may be
2 provided through contract, grant or coop-
3 erative agreement, as may be appropriate.

4 “(iii) The Administration is author-
5 ized to make payments under contracts,
6 grants, or cooperative agreements entered
7 into under this paragraph in lump sum or
8 installments, in advance or by way of reim-
9 bursement, making any necessary adjust-
10 ments for overpayments or underpayments.

11 “(8) VERIFICATION OF INDIVIDUAL ELIGI-
12 BILITY.—

13 “(A) ANNUAL CERTIFICATION OF OWNER-
14 SHIP AND CONTROL.—Each Program Partici-
15 pant shall certify, on an annual basis, that it
16 meets the requirements of paragraph (2)(C) re-
17 garding ownership and control.

18 “(B) ANNUAL FINANCIAL STATEMENT.—
19 Each Program Participant shall annually sub-
20 mit to the Administration such information as
21 may be necessary for the Administration to
22 make a determination of continued eligibility
23 for Program participation, including a personal
24 financial statement from each owner.

1 “(C) PROMPT NOTIFICATION OF CHANGE
2 OF OWNERSHIP REQUIRED.—A Program Partic-
3 ipant shall notify the Administrator imme-
4 diately upon entering an agreement (either oral
5 or in writing) to transfer all or part of its stock
6 or other ownership interest to any other party.

7 “(D) SPECIAL RULE FOR TRANSFERS TO
8 SMALL BUSINESS INVESTMENT COMPANIES.—
9 For the purposes of determining ownership and
10 control of a Program Participant, any potential
11 ownership interests held by investment compa-
12 nies licensed under the Small Business Invest-
13 ment Act of 1958 shall be treated in the same
14 manner as interests held by the individuals
15 upon whom Program eligibility is based.

16 “(E) STATUS REVIEW.—

17 “(i) Whenever the Administration has
18 reason to believe, based upon specific and
19 credible information, that a Program Par-
20 ticipant no longer meets the requirements
21 for the Program, the Administration shall
22 conduct a review, and if appropriate, take
23 remedial action.

24 “(ii) If the Administration determines,
25 pursuant to such review, that a Program

Participant (other than an Indian tribe or a Native Hawaiian Organization) or its owners are no longer eligible, a termination proceeding shall be commenced.

“(9) TERMINATION OF PARTICIPATION.—

“(A) IN GENERAL.—A Program Participant shall cease to be a Program Participant, if such firm—

“(i) voluntarily elects not to continue Program participation;

“(ii) completes its term of Program participation;

“(iii) is terminated from Program participation pursuant to a termination proceeding; or

“(iv) is graduated pursuant to a graduation proceeding.

“(B) TERMINATION.—

“(i) DEFINITION.—For the purposes of this subsection, the term ‘termination’ (or ‘terminated’) means the total denial or suspension of Program participation prior to the Program Participant exiting the Program due to graduation or the expiration of its Program Participation term.

1 “(ii) GROUNDS FOR TERMINATION.—

2 An action for termination shall be based
3 upon good cause as specified in implement-
4 ing regulation, and shall include—

5 “(I) failure of the Program Par-
6 ticipant to maintain its eligibility for
7 Program participation;

8 “(II) a demonstrated pattern of
9 failing to make required submissions
10 or responses to the Administration in
11 a timely manner; or

12 “(III) willful violation of any rule
13 or regulation of the Administration
14 pertaining to material issues relating
15 to Program participation.

16 “(iii) TERMINATION PROCEEDING.—

17 Whenever the Administration determines
18 to initiate a termination proceeding, within
19 15 days after making such a determina-
20 tion, the Program Participant shall be pro-
21 vided a written notice of intent to termi-
22 nate, specifying the reasons for such ac-
23 tion. No Program Participant shall be ter-
24 minated without first being afforded an op-
25 portunity for a hearing on the record, in

1 accordance with chapter 5 of title 5, Unit-
2 ed States Code.

3 “(C) GRADUATION.—

4 “(i) DEFINITION.—For the purposes
5 of this subsection, the term ‘graduation’
6 (or ‘graduated’) means that the Program
7 Participant is recognized as successfully
8 completing the Program by substantially
9 achieving the targets, objectives, and goals
10 contained in its business plan, or otherwise
11 demonstrating its ability to compete in the
12 marketplace.

13 “(ii) GRADUATION PROCEEDING.—
14 Whenever the Administration determines
15 to initiate a graduation proceeding with
16 which the Program Participant does not
17 concur, within 15 days after making such
18 determination, the Program Participant
19 shall be provided a written notice of the
20 Administration’s intent to involuntarily
21 graduate the concern, specifying the rea-
22 sons for such determination. No Program
23 Participant shall be involuntarily grad-
24 uated without first being offered an oppor-
25 tunity for a hearing on the record, in ac-

1 cordance with chapter 5 of title 5, United
2 States Code.

3 “(10) PROGRAM MANAGEMENT.—

4 “(A) MANAGEMENT INFORMATION SYS-
5 TEM.—The Administrator shall develop and im-
6 plement a process for the systematic collection
7 of data on the operations of the Program, mon-
8 itoring regularly the effectiveness of the assist-
9 ance being provided to each Program Partici-
10 pant.

11 “(B) ANNUAL REPORT TO CONGRESS.—

12 “(i) REPORT REQUIRED.—Not later
13 than April 30 of each year, the Adminis-
14 trator shall submit a report to the Con-
15 gress on the Program regarding the effec-
16 tiveness of the Program in fostering the
17 entrepreneurial development of Program
18 Participants.

19 “(ii) CONTENTS OF THE REPORT.—In
20 addition to such performance measures as
21 the Administrator deems appropriate, the
22 report shall include the following—

23 “(I) The average personal net
24 worth of individuals who own and con-
25 trol concerns that were initially cer-

1 tified for participation in the Program
2 during the immediately preceding fis-
3 cal year.

4 “(II) A compilation and evalua-
5 tion of those business concerns that
6 have exited the Program during the
7 immediately preceding three fiscal
8 years. Such compilation and evalua-
9 tion shall detail the number of con-
10 cerns actively engaged in business op-
11 erations, those that have ceased or
12 substantially curtailed such operations
13 (including the reasons for such ac-
14 tions), and those concerns that have
15 been acquired by other business con-
16 cerns or entities.

17 “(III) A listing of all participants
18 in the Program during the preceding
19 fiscal year identifying, by State and
20 by Region, for each firm: the name of
21 the concern, the race or ethnicity, and
22 gender of the owners, gross receipts,
23 number of employees, the dollar value
24 of all contracts received in the preced-
25 ing year, the dollar amount of ad-

1 vance payments received by each con-
2 cern, and a description including (if
3 appropriate) an estimate of the dollar
4 value of all other assistance furnished
5 under the Program during such year.

6 “(C) The first report required by subpara-
7 graph (B) shall pertain to fiscal year 1997.

8 “(11) PERSERVING PROGRAM INTEGRITY.—

9 “(A) IN GENERAL.—No person within the
10 employ of the Administration shall, during the
11 term of such employment and for a period of
12 two years after such employment has been ter-
13 minated, engage in any activity or transaction
14 specified in subparagraph (B) with respect to
15 any Program Participant during such person’s
16 term of employment, if such person participated
17 personally (either directly or indirectly) in deci-
18 sionmaking responsibilities relating to such Pro-
19 gram Participant or with respect to the admin-
20 istration of any assistance provided to Program
21 Participants generally under this subsection.

22 “(B) PROHIBITED ACTIONS.—The activi-
23 ties and transactions prohibited by subpara-
24 graph (A) include—

1 “(i) the buying, selling, or receiving
2 (except by inheritance) of any legal or ben-
3 efcial ownership of stock or any other
4 ownership interest or the right to acquire
5 any such interest;

6 “(ii) the entering into or execution of
7 any written or oral agreement (whether or
8 not legally enforceable) to purchase or oth-
9 erwise obtain any right or interest de-
10 scribed in clause (i); or

11 “(iii) the receipt of any other benefit
12 or right that may be an incident of owner-
13 ship.

14 “(D) PENALTIES.—Any present or former
15 employee of the Administration who violates
16 this paragraph shall be subject to a civil pen-
17 alty, assessed by the Attorney General, that
18 shall not exceed 300 percent of the maximum
19 amount of gain such employee realized or could
20 have realized as a result of engaging in those
21 activities and transactions prescribed by sub-
22 paragraph (B).”

1 **SEC. 3. ELIMINATION OF 8(a) CONTRACTING AUTHORITY.**

2 (a) REPEAL OF SECTION 8(A).—Section 8(a) of the
3 Small Business Act (15 U.S.C. 637(a)) is amended to read
4 as follows:

5 “SEC. 8(a). [RESERVED].”

6 (b) AUTHORITY TO PERFORM EXISTING 8(a) CON-
7 TRACTS.—Subject to the provisions of Section 8(a) of the
8 Small Business Act (15 U.S.C. 637(a)) as in effect on the
9 day before the date of enactment of this Act, a contract
10 (including options) awarded pursuant to that subsection
11 may be performed by the concern awarded such contract.

12 (c) DEFINITIONS.—Section 3 of the Small Business
13 Act (15 U.S.C. 632) is amended by adding the following
14 new subsections:

15 “(o) For the purposes of this Act, the term ‘Indian
16 tribe’ means any band, nation, or other organized group
17 or community of Indians, including any Alaska Native vil-
18 lage or a regional or village corporation (within the mean-
19 ing of the Alaska Native Claims Settlement Act) which
20 is recognized as—

21 “(1) eligible for the special programs and serv-
22 ices provided by the United States to Indians be-
23 cause of their status as Indians, or

24 “(2) an Indian tribe by the State in which such
25 band, nation, group, or community resides.

1 “(p) For the purposes of this Act, the term ‘Native
2 Hawaiian Organization’ means any community service or-
3 ganization serving Native Hawaiians in the State of Ha-
4 waii, which—

5 “(1) is a not-for-profit organization chartered
6 by the State of Hawaii,

7 “(2) is controlled by Native Hawaiians, and

8 “(3) whose business activities will principally
9 benefit Native Hawaiians.”.

10 (d) STATUS PROTEST SYSTEM.—Section 8(d) of the
11 Small Business Act (15 U.S.C. 637(d)) is amended by
12 adding at the end thereof a new paragraph (11), as fol-
13 lows:

14 “(11)(A) A protest may be brought regarding a
15 representation by a business concern regarding its
16 status as small business concern owned and con-
17 trolled by socially and economically disadvantaged
18 individuals by

19 “(i) another person with a direct economic
20 interest in the award of the contract or sub-
21 contract under which such business has alleg-
22 edly made the false representation regarding its
23 status as a small business concern owned and
24 controlled by socially and economically dis-
25 advantaged individuals;

1 “(ii) a prime contractor receiving specific
2 and credible information that an actual or pro-
3 spective subcontractor or supplier has falsely
4 represented its status as a small business con-
5 cern owned and controlled by socially and eco-
6 nomically disadvantaged individuals;

7 “(iii) a contracting officer receiving a rep-
8 resentation regarding an actual or prospective
9 contractor’s status, which such officer believes
10 to be false; or

11 “(iv) the Administrator (or a designee of
12 such officer).

13 “(B) The Office of Hearings and Appeals shall
14 hear appeals regarding the status of a concern as a
15 small business concern owned and controlled by so-
16 cially and economically disadvantaged individuals for
17 the purposes of any program or activity conducted
18 pursuant to this subject or any other Federal law
19 that refers to this subsection for a description of
20 program eligibility.

21 “(C) A decision issued pursuant to subpara-
22 graph (B) shall—

23 “(i) be made available to all parties to the
24 proceeding;

25 “(ii) be published in full text; and

1 “(iii) include findings of fact and conclu-
2 sions of law, with specific reasons supporting
3 such findings and conclusions, on each material
4 issue of fact and law of decisional significance
5 regarding the disposition of the protest.

6 “(D) A decision issued pursuant to subpara-
7 graph (B) shall be considered a final agency action,
8 and shall be subject to judicial review under section
9 553 of title 5, United States Code.

10 “(E) If a firm engages in a pattern of misrepre-
11 sentations regarding the firm’s status in violation of
12 section 16(d)(1), the Administration or the executive
13 agency receiving such misrepresentations of status
14 shall initiate an action to impose an appropriate
15 sanction under section 16(d)(2).”.

16 (4) SIZE DETERMINATIONS REGARDING TRIB-
17 ALLY-OWNED CORPORATIONS.—Section 3(a) of the
18 Small Business Act (15 U.S.C. 632(a)) is amended
19 by adding at the end the following new paragraph:

20 “(4) In determining the size of a business con-
21 cern owned by an Indian tribe (or a wholly-owned
22 business entity of such tribe), each firm’s size shall
23 be independently determined without regard to its
24 affiliation with the tribe, any entity of the tribal gov-
25 ernment, or any other business enterprise owned by

1 the tribe, unless the Administrator determines that
2 one or more such tribally-owned business concerns
3 have obtained (or are likely to obtain) a substantial
4 unfair competitive advantage within an industry cat-
5 egory.”.

6 (5) POLITICALLY MOTIVATED ACTIONS PROHIB-
7 ITED.—Section 4 of the Small Business Act (15
8 U.S.C. 633) is amended by adding at the end the
9 following new subsection:

10 “(g) POLITICALLY MOTIVATED ACTIONS PROHIB-
11 ITED.—

12 “(1) IN GENERAL.—Any employee of the Ad-
13 ministration who has authority to take, direct others
14 to take, recommend, or approve any action with re-
15 spect to any program or activity conducted pursuant
16 to this Act, shall not, with respect to any such ac-
17 tion, exercise or threaten to exercise such authority
18 on the basis of the political activity or affiliation of
19 any party. Employees of the Administration shall ex-
20 peditiously report to the Inspector General of the
21 Administration any such action for which such em-
22 ployee’s participation has been solicited or directed.

23 “(2) PENALTIES AUTHORIZED.—Any employee
24 who willfully and knowingly violates paragraph (1)
25 shall be subject to disciplinary action, which may

1 consist of separation from service, reduction in
2 grade, suspension, or reprimand.

3 “(3) RULE OF CONSTRUCTION.—Paragraph (1)
4 shall not apply to any action taken as a penalty or
5 other enforcement of a violation of any law, or regu-
6 lation prohibiting or restricting political activity.

7 “(4) SAVINGS PROVISION.—The prohibitions of
8 paragraph (1), and remedial measures provided for
9 under paragraphs (2) and (3) with regard to such
10 prohibitions, shall be in addition to, and not in lieu
11 of, any other prohibitions, measures or liabilities
12 that may arise under any other provision of law.”.

13 **SEC. 4. PROCUREMENT FORECASTS.**

14 Section 15(d) of the Small Business Act (15 U.S.C.
15 644(d)) is amended to read as follows:

16 “(d)(1) Each executive agency reporting to the Fed-
17 eral Procurement Data System contract actions with an
18 aggregate value in excess of \$50,000,000 in fiscal year
19 1995, or in any succeeding fiscal year, shall prepare a
20 forecast of expected contract opportunities or classes of
21 contract opportunities for the next and succeeding fiscal
22 years that small business concerns, including those owned
23 and controlled by women or socially and economically dis-
24 advantaged individuals, are capable of performing. Such
25 forecast shall be periodically revised during such year.

1 “(2) To the extent such information is available, the
2 agency forecasts required by paragraph (1) shall specify—

3 “(A) The approximate number of individual
4 contract opportunities (and the number of opportu-
5 nities within a class).

6 “(B) The approximate dollar value, or range of
7 dollar values, for each contract opportunity or class
8 of contract opportunities.

9 “(C) The anticipated time (by fiscal year quar-
10 ter) for the issuance of a procurement request.

11 “(D) The activity responsible for the award and
12 administration of the contract.

13 “(3) The head of such executive agency subject to
14 the provisions of paragraph (1) shall, within 10 days of
15 its completion, furnish such forecast (and any modifica-
16 tion) to—

17 “(A) the Director of the Office of Small and
18 Disadvantaged Business Utilization established pur-
19 suant to section 15(k) for such agency; and

20 “(B) the Administrator.

21 “(4) The information reported pursuant to paragraph
22 (1) may be limited to classes of items and services for
23 which there are substantial annual purchases.

24 “(5) Such forecasts shall be made available to any
25 small business concerns upon request.”.

1 **SEC. 5. NON-MANUFACTURER RULE.**

2 Section 15(f) of the Small Business Act (15 U.S.C.
3 644(f)) is amended to read as follows:

4 “(f)(1) An otherwise responsible small business con-
5 cern that is in compliance with the requirements of para-
6 graph (2) shall not be denied the opportunity to submit
7 and have considered its offer for any procurement contract
8 for the supply of a product to be let pursuant to subsection
9 (a) solely because such concern is other than the actual
10 manufacturer or processor of the product to be supplied
11 under the contract.

12 “(2) To be in compliance with the requirements re-
13 ferred to in paragraph (1), such a business concern
14 shall—

15 “(A) be primarily engaged in the wholesale or
16 retail trade;

17 “(B) be a small business concern under the nu-
18 merical size standard for the Standard Industrial
19 Classification Code assigned to the contract sollicita-
20 tion on which the offer is being made;

21 “(C) be a regular dealer, as defined pursuant to
22 section 35(a) of title 41, United States Code (popu-
23 larly referred to as the Walsh-Healey Public Con-
24 tracts Act), in the product to be offered the Govern-
25 ment; and

1 “(D) represent that it will supply the product
2 of a domestic small business manufacturer or proc-
3 essor, unless a waiver of such requirement is grant-
4 ed.

5 “(i) by the Administrator, after reviewing
6 a determination by the contracting officer that
7 no small business manufacturer or processor
8 can reasonably be expected to offer a product
9 meeting the specifications (including period for
10 performance) required of an offeror by the so-
11 licitation; or

12 “(ii) by the Administrator for a product
13 (or class of products), after determining that no
14 small business manufacturer or processor is
15 available to participate in the Federal procure-
16 ment market.”.

17 **SEC. 6. REFERENCES TO ADMINISTRATOR.**

18 In this Act, the term Administrator means Adminis-
19 trator of the Small Business Administration.

○